

§ 701.1 Purpose.

The Defense Production Act Amendments of 1992 require the Secretary of Commerce to promulgate regulations for U.S. firms entering into contracts for the sale of defense articles or defense services to foreign countries or foreign firms that are subject to offset agreements exceeding \$5,000,000 in value to furnish information regarding such agreements. The Secretary of Commerce has designated the Bureau of Export Administration as the organization responsible for implementing this provision. The information provided by U.S. firms will be aggregated and used to determine the impact of offset transactions on the defense preparedness, industrial competitiveness, employment, and trade of the United States. Summary reports will be submitted annually to the Congress pursuant Section 309 of the Defense Production Act of 1950, as amended.

§ 701.2 Definitions.

(a) *Offsets*—Compensation practices required as a condition of purchase in either government-to-government or commercial sales of defense articles and/or defense services as defined by the Arms Export Control Act and the International Traffic in Arms Regulations.

(b) *Military Export Sales*—Exports that are either Foreign Military Sales (FMS) or commercial (direct) sales of defense articles and/or defense services as defined by the Arms Export Control Act and International Traffic in Arms Regulations.

(c) *Prime Contractor*—A firm that has a sales contract with a foreign entity or with the U.S. Government for military export sales.

(d) *United States*—Includes the 50 states, the District of Columbia, Puerto Rico, and U.S. territories.

(e) *Offset Agreement*—Any offset as defined above that the U.S. firm agrees to in order to conclude a military export sales contract. This includes all offsets, whether they are “best effort” agreements or are subject to penalty clauses.

(f) *Offset Transaction*—Any activity for which the U.S. firm claims credit for full or partial fulfillment of the offset agreement. Activities to implement

offset agreements may include, but are not limited to, coproduction, licensed production, subcontractor production, overseas investment, technology transfer, countertrade, barter, counterpurchase, and buy back.

(g) *Direct Offset*—Contractual arrangements that involve defense articles and services referenced in the sales agreement for military exports.

(h) *Indirect Offset*—Contractual arrangements that involve defense goods and services unrelated to the exports referenced in the sales agreement.

§ 701.3 Applicability and scope.

(a) This rule applies to U.S. firms entering contracts for the sale of defense articles or defense services (as defined in the Arms Export Control Act and International Traffic in Arms Regulations) to a foreign country or foreign firm for which the contract is subject to an offset agreement exceeding \$5,000,000 in value.

(b) This rule applies to all offset transactions completed in performance of existing offset commitments since January 1, 1993 for which offset credit of \$250,000 or more has been claimed from the foreign representative, and new offset agreements entered into since that time.

§ 701.4 Procedures.

(a) To avoid double counting, firms should report only offset transactions for which they are directly responsible for reporting to the foreign customer (i.e., prime contractors should report for their subcontractors if the subcontractors are not a direct party to the offset agreement).

(b) Reports should be delivered to the Offsets Program Manager, U.S. Department of Commerce, Office of Strategic Industries and Economic Security, Bureau of Export Administration, Room 3878, 14th Street and Pennsylvania Avenue, N.W., Washington DC 20230. The first industry reports should be submitted to the Bureau of Export Administration not later than March 15, 1995 and should cover offset transactions completed during the calendar year 1993, as well as information regarding unfulfilled offset agreements. After this initial submission, companies should provide information once yearly